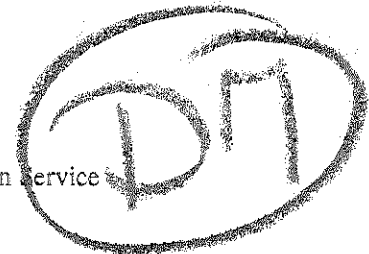




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U.S. Department of Justice

Immigration and Naturalization Service



OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



File: SRC 02 038 55327

Office: TEXAS SERVICE CENTER

Date: JAN 10 2003

IN RE: Petitioner:  
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act,  
8 U.S.C. 1101(a)(15)(L)

IN BEHALF OF PETITIONER:



Identifying data deleted to  
prevent clearly unwarranted  
invasion of privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, Texas Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is an import and export company which seeks to continue to employ the beneficiary in the United States as its general manager. The director determined that the petitioner had not established that the beneficiary would be employed in the United States in a managerial capacity.

On appeal, counsel acknowledges that at the time the petition was filed, the petitioner had only two full-time employees. Counsel indicates that since that time, the firm has hired two more employees, bringing the staff total to four persons. Counsel explains that the beneficiary is now supervising the manager of the marketing department, which has two employees and that he also supervises the person in charge of the clerical aspects of the company. Counsel states that the beneficiary also directs the financial, legal and banking aspects of the corporation.

Counsel explains that the parent company in Venezuela has been operating under a bad political situation which has made it impossible for the parent company and the United States enterprise to achieve the level of anticipated business between the two entities. Counsel submits documents and photographs to establish the firm's recent business activities.

8 C.F.R. 214.2(1)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

(i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (1)(1)(ii)(G) of this section.

(ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

The issue in this proceeding is whether the petitioner has established that the beneficiary will be employed in a primarily managerial or executive capacity.

The beneficiary entered the United States on September 6, 1999 in L-1A nonimmigrant status. The petitioner was incorporated on October 7, 1999 in the State of Florida. The petitioner now seeks to extend the petition's validity and the beneficiary's stay for an additional three years.

8 C.F.R. 214.2(1)(14)(ii) states that a visa petition under section 101(a)(15)(L) which involved the opening of a new office may be extended by filing a new Form I-129, accompanied by the following:

(A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (1)(1)(ii)(G) of this section;

(B) Evidence that the United States entity has been doing business as defined in paragraph (1)(1)(ii)(H) of this section for the previous year;

(C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;

(D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and

(E) Evidence of the financial status of the United States operation.

Section 101(a)(44)(A) of the Act, 8 U.S.C. 1101(a)(44)(A), provides:

The term "managerial capacity" means an assignment within an organization in which the employee primarily-

i. manages the organization, or a department, subdivision, function, or component of the organization;

ii. supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;

iii. if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

iv. exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line

supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. 1101(a)(44)(B), provides:

The term "executive capacity" means an assignment within an organization in which the employee primarily-

- i. directs the management of the organization or a major component or function of the organization;
- ii. establishes the goals and policies of the organization, component, or function;
- iii. exercises wide latitude in discretionary decision-making; and
- iii. receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

In the petition, the petitioner described the beneficiary's proposed job duties as follows:

In charge of supervising the various departments of the company.

The director determined that the petitioner had failed to establish that the beneficiary was managing a subordinate staff of professional, managerial or supervisory personnel who relieved him from performing non-qualifying duties.

The record shows that in 2000, during the firm's first year of operation, the petitioner had gross receipts and sales of only \$10,329 and paid no salaries, wages or compensation to officers. As indicated above, in November 2001, the company had only two full-time employees.

In this case, the descriptions of the beneficiary's job duties are insufficient to warrant a finding that the beneficiary will be employed in a managerial capacity. It appears, at most, the beneficiary will be performing operational rather than managerial duties. The petitioner has provided insufficient evidence to establish that the beneficiary has been or will be managing or directing the management of a function, department, subdivision or component of the company.

Based upon the record, even considering the firm now has additional employees working for the enterprise, the petitioner has not provided evidence that the beneficiary will be managing a subordinate staff of professional, managerial or supervisory

personnel who relieve him from performing non-qualifying duties. The beneficiary is the individual performing the necessary tasks for the ongoing operation of the company, rather than primarily directing or managing those functions through the work of others. For this reason, the petition may not be approved.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.